

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

May 24, 1995
AO-95-18

Carol Martin, Town Clerk
Town of Falmouth
P.O. Box 904
Falmouth, MA 02541

Re: Application of M.G.L. c. 55, s. 15 to town meeting members

Dear Ms. Martin:

This letter is in response to your April 27, 1995 request for an advisory opinion regarding the application of M.G.L. c. 55, s. 15¹ to town meeting members.

M.G.L. c. 55, s. 15 states that "persons in the service of the commonwealth or of any county, city or town" may not "give or deliver to an officer, clerk or [other] person in said service, . . . any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever." A political committee may be organized on behalf of a candidate who is a "person in the service," and other "persons in the service" may give or deliver contributions to the committee. Persons in the service should not serve as treasurers of political committees since if such a person is treasurer any other person in the service would be prohibited from giving any contributions to the committee. See AO-92-16 (a copy is enclosed). Only if a committee adopts and applies a contributions policy which prohibits receipt of contributions by other "persons in the service" (a measure which would be very difficult to adopt and comply with) could the committee have a treasurer who is a "person in the service." Id.

In an advisory opinion recently issued by this office, we advised that although elected members of a representative town meeting do not need to report their campaign finance activity and (unlike other elected public officers) may be officers of PACs, such members are subject to M.G.L. c. 55, s. 15, since

¹ In your letter you refer to M.G.L. c. 55, s. 13, which prohibits persons employed for compensation by the commonwealth or its subdivisions from soliciting or receiving contributions. However, given the context of your question and the fact that town meeting members are not, by virtue of that position, employed for compensation by the town, I understand that you are primarily concerned with s. 15.

volunteer High School PTO members would probably not be "persons in the service."

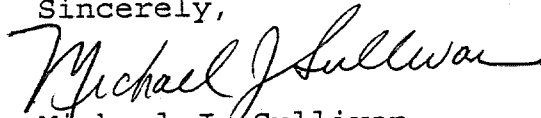
Consistent with the office's consistent interpretation of s. 15, members of a representative town meeting must be considered "persons in the service." M.G.L. c. 43A specifies the procedures for nomination and election of town meeting members in towns which choose to use the standard form of representative town meetings specified in that statute. Town meeting members in such towns hold "office." See M.G.L. c. 55, s. 4. In contrast, all voters in a town which has an open town meeting may vote on matters discussed in town meeting. See M.G.L. c. 39, s. 10. Therefore, although persons who are members of a representative town meeting should be considered "persons in the service," voters of a town which does not have a representative town meeting are not "persons in the service" subject to the provisions of M.G.L. c. 55, s. 15 since they are neither elected nor appointed to their positions.

Although I am compelled to conclude that members of a representative town meeting are subject to s. 15, I believe this result is not entirely satisfactory to such persons and this office would support legislative change to exempt such persons from the scope of s. 15. The number of town meeting members in a standard representative town meeting is statutorily required to be approximately 240 per town, but may be larger if a larger number is specified in a town's by-laws. See M.G.L. c. 43A, s. 4. Since these persons tend to be interested and involved in local issues, prohibiting their participation in political fundraising, solely because of their participation in town meeting, may seem inappropriate. Moreover, to regulate the participation of the most involved residents of a town only if the town has chosen to use a representative town meeting may also be troubling.

In conclusion, under the statute as presently enacted, the two town meeting members referred to in your letter should not continue to serve as treasurers of political committees unless their political committees adopt and apply a contributions policy which prohibits receipt of contributions by other "persons in the service."

This opinion has been rendered solely on the basis of representations made in your letter and in your conversations with office staff members, and solely in the context of M.G.L. c. 55. Please contact the office if you have any additional questions.

Sincerely,


Michael J. Sullivan
Director

MJS/cp
Enclosures

they are "persons in the service of" a town. See AO-95-03 (a copy is enclosed). Although we state on page 3 of the advisory that town meeting members are subject to s. 15, the office did not consider the distinction between elected town meeting members and members of an open town meeting, and the opinion was issued in response to a question relating only to the application of s. 15 to candidates for representative town meeting membership.

You have stated that two town meeting members in Falmouth also serve as treasurers of ballot question committees. Under AO-95-03 you understand that all town meeting members are prohibited from serving as treasurers for political committees. Although Falmouth has a representative town meeting, you have asked whether s. 15 applies to town meeting members in both representative and open town meetings. You have suggested that s. 15 should not apply to town meeting members in either setting, since those persons who are interested in serving as treasurers of political committees tend to be town meeting members, and the statute was not intended to prohibit such involvement.

As noted in AO-95-03, candidates for membership in a representative town meeting are not required to report campaign finance activity and are not subject to many of the campaign finance law's restrictions applicable to other candidates for public office. As we stated in AO-95-03, however, "the policy considerations underlying sections 13 through 17 [of the campaign finance law], i.e., the avoidance of corruption or the appearance of corruption in the public sector, are different than the concerns underlying the disclosure and limitation requirements [of the law] . . . sections 13 through 17 have broader application than other portions of the law."

Moreover, with respect to section 15, the language of the statute requires this office to treat persons who provide meaningful service to a town and are elected or appointed to their office as within the scope of that section. As we noted in AO-93-24 (a copy is enclosed), an advisory opinion concluding that a volunteer firefighter is a "person in the service":

This office has previously advised that the phrase ["person in the service"] "was intended to include any elected, appointed or other person, regardless of compensation, who is providing significant public services to the commonwealth or one of its subdivisions or authorities." See AO-92-01. The office has stated that "the fact of official appointment or election to an office is an important, if not essential, criterion in determining whether someone is a 'person in the service' for purposes of section 15." Id. For example, a part-time consultant receiving \$1,500 to \$2,000 from a municipality was a "person in the service" of the town since there was an official contractual relationship. On the other hand, unappointed,